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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/881,686	06/18/2001	Sandrine Segura	016800-445	9187
7590	07/28/2004		EXAMINER	
Norman H. Stepno, Esquire BURNS, DOANE, SWECKER & MATHIS, L.L.P. P.O. Box 1404 Alexandria, VA 22313-1404			WELLS, LAUREN Q	
			ART UNIT	PAPER NUMBER
			1617	

DATE MAILED: 07/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/881,686	SEGURA ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Lauren Q Wells	1617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 29 March 2004.
- 2a) This action is **FINAL**.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1-18 and 20-50 is/are pending in the application.
- 4a) Of the above claim(s) 5-7,30 and 44-46 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-4,8-18,20-29,31-43 and 47-50 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_.
- 4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

## **DETAILED ACTION**

Claims 1-18, 20-50 are pending. Claims 5-7, 30, and 44-46 are withdrawn from consideration, as they are directed to non-elected subject matter. The Amendment filed 3/29/04, amended claims 12, 14, 27, 33, 34, and 38 and cancelled claims 51-92.

The Supplemental Amendment filed 6/22/04 has not been considered, as it was not timely filed. The non-final Office Action was mailed 9/29/03. On 3/29/04, a response with a 3-month extension of time was filed. Thus, a response filed after 3/29/04 is untimely.

### ***Response to Applicant's Arguments/Amendment***

The Applicant's arguments filed 3/29/04 to the rejection of claims 1-4, 8-18, 20-29, 31-43, 47-48, 50-90, and 92 made by the Examiner under 35 USC 103 have been fully considered and deemed not persuasive.

Applicant's amendment to the claims filed 3/29/04, is sufficient to overcome parts (i)-(iv) of the 35 USC 112 rejections in the previous Office Action. Applicant's argument filed 3/29/04, wherein the Examiner is directed to page 14, [0082], for support for the term "cellulose derivative" is sufficient to overcome the rejection over claim 38.

### ***103 Rejection Maintained***

The rejection of claims 1-4, 8-10, 15-18, 20-29, 40-43, 47-48, 50 under 35 U.S.C. 103(a) as being unpatentable over Lochhead et al. (EP 0 268 164) in view of the Handbook of Cosmetic Science and Technology is MAINTAINED for the reasons set forth in the Office Action mailed 9/29/03, and those found below.

The rejection of claims 11-12, 37-39 under 35 U.S.C. 103(a) as being unpatentable over Lochhead et al. (EP 0 268 164) in view of the Handbook of Cosmetic Science and Technology,

as applied to claims 1-4, 8-10, 15-18, 20-29, 40-43, 47-48, 50, and further in view of Pisson et al. (5,882,633) is MAINTAINED for the reasons set forth in the Office Action mailed 9/29/03, and those found below.

The rejection of claims 13-14 under 35 U.S.C. 103(a) as being unpatentable over Lochhead et al. (EP 0 268 164) in view of the Handbook of Cosmetic Science and Technology and in view of Pisson et al., as applied to claims 1-4, 8-12, 15-18, 20-29, 37-43, 47-48, 50, and further in view of Kaplan et al. (5,916,543) is MAINTAINED for the reasons set forth in the Office Action mailed 9/29/03, and those found below.

The rejection of claims 31-36 under 35 U.S.C. 103(a) as being unpatentable over Lochhead et al. (EP 0 268 164) in view of the Handbook of Cosmetic Science and Technology, as applied to claims 1-4, 8-10, 15-18, 20-29, 40-43, 47-48, 50, and further in view of Kim et al. (5,980,939) is MAINTAINED for the reasons set forth in the Office Action mailed 9/29/03, and those found below.

Applicant argues, “The size of the particles disclosed in Lochhead is directed to the size of the dispersed phase (oil) of the emulsion, whereas in Applicants’ invention, the size of the particles is directed to the micronized and non-solubilized biologically active agent particles independently of the size of the oily droplets of the emulsion”. This argument is not persuasive. First, it is respectfully pointed out that the Examiner disagrees with Applicant’s characterization of the reference. It is respectfully pointed out that Lochhead discloses the particle size of the emulsion and that the particle size is not merely in reference to the oil phase (dispersed phase). The Examiner specifically directs Applicant to page 8 of Lochhead, lines 5-7, which states, “Conventional oil-in-water emulsions have particle size of less than 10 microns, preferably 0.1-5

microns. Surprisingly, the oil-in-water emulsions prepared with the modified polymer have a much larger particle size averaging about 50 microns and are in the range of 10 to 100 microns". As can be seen from this citation, the teaching of the size of the particles is directed toward the emulsion, as a whole. Second, the Handbook of Cosmetic Science and Technology specifically teaches the benefit of emulsions as a whole, having a smaller particle size.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

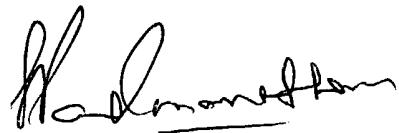
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lauren Q Wells whose telephone number is 571-272-0634. The examiner can normally be reached on M&R (5:30-4).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on 571-272-0629. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

lqw



SREENI PADMANABHAN  
SUPERVISORY PATENT EXAMINER